RIGHT OF ENTRY FOR CONDITION BROKEN WITHIN THE RULE AGAINST PERPETUITIES. — A right of entry for condition broken is within the operation of the Rule against Perpetuities. At last that point has been directly passed on by an English court. *In re The Trustees of Hollis' Hospital and Hague's Contract*, [1899] 2 Ch. D. 540. There one Hollis by lease and release conveyed property in 1726 to trustees upon trusts for a hospital. The release contained a proviso that if the premises should be used for any other purposes they were to revert immediately to the right heirs of Hollis. In 1898 a contract was made by the trustees to sell part of the property so conveyed, and the purchaser contended that a good title could not be made because of the condition contained in the original release. The court, however, held that this was an express common law condition subsequent, that as such it was void as a perpetuity, and that, therefore, a good title could be passed. The views of Lewis, Sanders and Gray were sustained, and that of Challis rejected. As a matter of authority in England two *dicta* are to be found on the point; they suggest, in line with the present case, that such a future interest may well be within the Rule against Perpetuities. *Re Macleay*, L. R. 20 Eq. 186; *Dunn* v. *Flood*, 25 Ch. D. 629. In the United States, while there is practically no decision in which the objection of remoteness in a condition has been passed upon, yet there are many cases in which conditions obnoxious to the Rule have been upheld without that difficulty having been noticed at all. *Cowell* v. *Springs Co.*, 100 U. S. 55; *Guild* v. *Richards*, 16 Gray 309. The great weight of authority in this country, apparently without any consideration of the question, creates in this regard an arbitrary exception to the Rule against Perpetuities.

It is eminently satisfactory that the point has finally been carefully argued, judicially determined and a sound result reached. Where express or implied conditions were attached to a conveyance the grantor had a right to enter on breach of the condition, — this right was not dependent on tenure, and was not affected by the statute *Quia Emptores*. It has been argued that these interests are not within the Rule against Perpetuities, because they are common law interests and releasable. But common law interests may well be within the Rule, for instance the executory devise of a chattel real. And interests which are releasable are also not excluded from its operation. Great practical inconvenience must result from a doctrine opposed to the one in the present case, particularly in America, where the number of heirs from whom the owner must seek a release of this right increases greatly as time goes on. Gray, Rule against Perpetuities, §§ 299–311.

UNCONSTITUTIONAL LEGISLATION AS A DEFENCE. — The liability of an officer who executes a law which is later held void is one of the unsatisfactory phases of the American doctrine of unconstitutional legislation. It is a development of an older problem: the defence to a trespass afforded by judicial process. An officer is not protected in the execution of warrants which disclose on their face their invalidity. This is not, however, limited to defects of form. An excess of jurisdiction, not dependent on some error in the previous procedure, is said to appear from the face of the document since an officer of court is presumed to know the law. This reasoning, first applied to the common law limits of jurisdiction, has been extended, in most States, to an exercise of jurisdiction

given by unauthorized local ordinances and statutes later held unconstitutional. And so, although it is admitted that a judge of a superior court is not liable for any judicial utterance, subordinate justices, sheriffs and even public prosecutors have been held liable for enforcing mandates of legislative bodies. *Kelley* v. *Bemis*, 4 Gray, 83; *Merrit* v. *St. Paul*, 11 Minn. 223; *Warren* v. *Kelley*, 80 Me. 512. A few States, however, have repudiated this doctrine. *Edes* v. *Boardman*, 58 N. H. 580; *Brooks* v. *Mangan*, 86 Mich. 576. The reasoning of this latter case was recently affirmed and applied in defence of a public officer who procured issue of process under an ordinance which the court held invalid. *Tillman* v. *Beard*, 80 N. W. Rep. 248 (Mich.).

In continental Europe the need of decisive executive action in States surrounded by enemies gave rise to a distinct system of administrative law for the protection of such officials. England, however, since freer from external pressure, developed no such system. In this country, though it is thought that the foundations are being laid for a national administrative law, as yet it has not been generally recognized. The problem of unconstitutional legislation, however, is peculiarly our own, and it may be suggested that old precedents derived from England should not prevent our working out in this case some system of administrative protection.

It would seem, moreover, that a distinction may be drawn between those early decisions and the principal case. The reason for the original doctrine that an executive officer is liable for excess of jurisdiction was the danger of abuse of official power. From unconstitutional laws, however, our danger is not abuse of process, but abuse of legislative discretion. It is, moreover, not unfair to hold that officers are bound to know the extent of their jurisdiction at common law; but to say they must know the true limits of the authority of a legislature is to demand an impossibility. The maxim that "ignorance of law excuseth no one" is here inapplicable. The officer does not rely on the statute as law, but on the statute as a fact, — as an order or declaration of a body which he is bound to obey. To reply with the fiction that such statute is as if it never had been is a confession of weakness. Overruling an act of legislature is a decision to be made with reluctance even by a co-ordinate department. It would be, therefore, highly unbecoming in a subordinate official to deny validity to a statute. To compel him to such a decision is to abandon a cardinal principle of constitutional interpretation. In view of these objections, one would think that the liability attached to officers who exceed their common law jurisdiction should not be extended in this country to express statutory additions to their jurisdiction in which the legislature has exceeded its powers.

RECENT CASES.

ADMIRALTY — BAIL — RE-ARREST OF VESSEL. — A foreign vessel was arrested in a suit *in rem*, and bail given for the value of the ship and freight. The damages assessed exceeded the bail, and on the ship afterwards coming into an English port she was re-arrested. *Held*, that in an action *in rem*, where the owners have appeared, the damages are not limited to the value of the *res* and the ship was rightly re-arrested. *The Gemma*, [1899] P. D. 285. See NOTES.